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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/821,269

04/09/2004

Henry Sterchi

723-1502

8633

27562

7590

07/24/2008

NIXON & VANDERHYE, P.C.

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ARLINGTON, VA 22203

EXAMINER

OMOTOSHO, EMMANUEL

ART UNIT

PAPER NUMBER

3714

MAIL DATE

DELIVERY MODE

07/24/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/821,269	<b>Applicant(s)</b> STERCHI ET AL.	
	<b>Examiner</b> EMMANUEL OMOTOSHO	<b>Art Unit</b> 3714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 17 April 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-24 and 104-111 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-24, 104-111 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-24 and 104-111 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No. 5,435,554 to Lipson.

3. Claim 1,9,19, 104: Lipson teaches a baseball video game wherein animated action is performed by a pitcher character in response to input by a user provided through a user-operable controller, a method of controlling game play comprising monitoring for user input on the user-operable controller requesting release of a baseball pitch by the pitcher character (fig 4b el. 112). Detecting when user input is requested on the user-operable controller requesting release of the baseball pitch by the pitcher character (fig 4b el. 114,116). Comparing a time at which the user input is detected to an optimal pitch release timing (fig 4b el. 128,130). Then controlling a timing of a break on the baseball pitch based on the comparison (Par 9:56-66, Par 13:15-28, fig 4c el. 200).

4. **Lipson fails to specifically teach that the above method of controlling the timing of a break on a baseball pitch is done at the beginning of the pitcher's character's wind-up session. And that the releasing of the pitch corresponds to the time at which the user input is detected since the pitcher character's wind-up**

**has began. However, applicant's invention is directed to using a gauge to determine when a pitch break occurs in the trajectory of the ball. Lipson's invention is also directed to using a gauge to determine when a pitch break occurs in the trajectory of the ball. To have the gauge correspond to the beginning of the pitchers wind up would have been obvious to one having ordinary skill in the art. In real baseball, the pitch style and break point of the pitch is dependent on the power and movement exhibited during the wind up session and ball release session of the pitcher. Lipson's gauges measures these attributes (i.e. power and pitch style). To now have these gauges correspond to the wind up session of a pitcher would have been obvious to one of ordinary skill in the art.**

5. Claim 2, 10, 18, 106: Lipson inherently teaches the timing of the break on the baseball pitch occurs relatively early in its flight when the time at which the user input is detected occurs earlier than the optimal pitch release timing. This feature is inherent since Lipson's system allows the pitcher to select what type of pitch first (curve, fast etc... Par 4:67-5:1-14) and Lipson's maximum and optimal break is based on the type of pitch and user selections (Par 13:15-27)

6. Claim 3,11,19: Lipson inherently teaches the timing of the break on the baseball pitch occurs relatively late in its flight when the time at which the user input is detected occurs at or during the optimal pitch release timing. This feature is inherent since Lipson's system allows the pitcher to select what type of pitch first (curve, fast etc... Par

4:67-5:1-14) and Lipson's maximum and optimal break is based on the type of pitch and user selections (Par 13:15-27).

7. Claim 4,12,20, 107: Lipson inherently teaches the timing of the break on the baseball will result in the pitch being outside of a batter character's strike zone when the time at which the user input is detected occurs after the optimal pitch release timing (Par 6:36-50, fig 38 el. 78,80).

8. Claim 5, 13, 21, 108: the method of claim 1 wherein the optimal pitch release timing is a period of time (abstract).

9. Claim 6, 14, 22, 109: the method of claim 5 wherein the amount of time in the period of time forming the optimal pitch timing is variable (Par 9:22-49).

10. Claim 7, 15, 23, 110: Lipson teaches all the present invention but fail to specifically teach the amount of time in the period of time is varied based on performance statistics of the pitcher character. However, Lipson pointed out that basing the pitcher's abilities and skills on statistical data is extremely old in the art (Par 1:24-39). Therefore, it would have been an obvious design choice well within the skill set of an ordinary skill artisan to have the amount of time in the period of time varied based on performance statistics of the pitcher character. One would be motivated to incorporate this teaching if it is desired that the abilities and skill set of a pitcher be affected by the pitchers previous performance, further adding to the realism of the video game.

11. Claim 8, 16, 24, 111: Lipson fail to teach the amount of time in the period of time is varied based on a type of pitch selected by input on the user-operable controller that controls the action performed by the pitcher character. However, it is generally known

in baseball that some pitch-types are harder to throw. Therefore, it would have been obvious to one of ordinary skill in the art to simulate the difficulties of the pitch-types by assigning a different time amount to each type of pitch to further simulate the difficulty level of the specific pitch. This would further add realism to the game.

### ***Response to Arguments***

12. Applicant's arguments filed 4/17/08 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to EMMANUEL OMOTOSHO whose telephone number is (571)272-3106. The examiner can normally be reached on m-f 10-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Pezzuto can be reached on (571) 272-6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

EO

/Ronald Laneau/  
Primary Examiner, Art Unit 3714  
07/18/08